



EXECUTIVE COMPUTING

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Tips prevent programming disasters

Talk to experienced computer users about contract programmers and you'll quickly discover that (1) they're expensive and (2) they often fail to keep their promises. Keep talking, and you'll make a third discovery: Most companies that hire outside programmers don't take any steps to safeguard themselves.

Not surprisingly, you get a different story when you talk to programmers. They claim that users tend to change instructions midway through projects and then expect original time and cost estimates to be met.

Agreements important

The common method of keeping track of programming projects usually goes something like this:

User: "How are you doing?"

Programmer: "Great."

User: "Terrific, keep up the good work."

The mistake — made by both parties — is to rely on status reporting and verbal promises to keep track of programming projects. But often, programmers and non-data processing executives aren't speaking the same language. The answer is to have carefully prepared documents that protect everyone.

In this week's column, I'll provide a checklist of important provisions that can serve as a starting point for agreements with outside programmers. This is not a substitute for legal advice, merely a guideline to ensure that you haven't missed any essential points.

If it's done right, the contract will give the programmer incentives to be on your side. Things such as payments phased to milestones, bonuses and penalties will make it less expensive for the programmer to perform than not to. Indeed, most professionals will welcome such a contract, though they might not agree to every provision mentioned below.

Writing up a contract also forces the user to properly prepare for the project. You'll be ready with a list of logical, specific demands. You'll have a clear description of everything you want.

Contract checklist

✓ The scope of the project. This is the most important clause and the one most users fail to write properly. Don't settle for naming the applications and a few general features. Describe carefully every feature you want and include sample output reports.

✓ The timetable. The major events — the design, the coding, the testing — should appear in the contract with deadlines. Include remedies and rights if the deadlines are not met.

✓ Payment schedule. Schedule payments to performance. Your payments are your only real leverage to guarantee that each step is done to your satisfaction. Link all payments to the completion of a task. Retain at least a third of the total bill until the system has been fully operational for a given period of time.

✓ Who owns the product. Serious misunderstandings can arise if this clause isn't crystal clear. Without agreement to the contrary, the copyright laws can be construed to give the programmer ownership of the code. Be sure to clarify whether the programmer has the right to sell the programs to others.

✓ Trade secrets. In the course of the project, the programmer may have access to customer lists, payroll data or other valuable information. Spell out that all such data remains your sole property and mention penalties if security is breached.

✓ Programmer is an independent contractor. Failure to clearly establish this can result in problems with the IRS. Also, in case of a dispute, you don't want the programmer claiming to be an employee and cashing in on worker's compensation, unemployment benefits, etc.

✓ Legal responsibility. Be sure that the programmer accepts all legal and financial responsibilities for anyone else he or she employs. Proof of bonds and errors and omissions (E&O) insurance should be required.

✓ Right to terminate agreement. Be sure to define at least two options to terminate — the first at the end of each phase or milestone. If, for example, the programmer delivers an inadequate design, you should have the option to terminate without further obligation. Second, you should build in the option to terminate without cause. Your financial position may take a turn for the worse, or you may simply want to cut yourself loose from a project that is hopelessly bogged down. Obviously, you would pay the programmer for efforts to that point.

Final precaution

Last, but not least, I always recommend that programming contracts contain an arbitration clause. This may provide you with the only *practical* means of enforcing the agreement. Litigation is generally too time-consuming and costly to be much help. But if both parties agree in advance to submit disputes to binding arbitration, you stand a better chance of solving major problems quickly.

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